



Metropolitan Portland Health Information Exchange Vendor Terms and Conditions

Results and Reports Retrieval System

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Table of Contents

Financial Information	4
Exceptions	4
Offeror Responsibility.....	4
Covenant Against Contingent Fees.....	4
Affirmation.....	4
Pricing	4
Subcontracts	5
Confidentiality	5
Term.	5
Source Code Escrow.	6
Acceptance Process.....	6
Product Substitutions.....	6
Schedule for Performance of Work.....	6
Time of Performance	6
Personnel.....	7
Method of Payment	7
Service Levels and Failure to Perform	8
Remote Processing	9
Warranties and Standards of Performance.	10
Compliance with Law; Certification.	12
Confidentiality.	12
Insurance.	12
Indemnification.	12
Availability of Continued Funding.....	13
Hold Harmless.....	13
Non-Performance	13
Force Majeure	13
Document(s) Execution.....	13
Termination of Contract	14
Resolving Disputes	14
Changes	15
Interest of Contractor	15
Publication, Reproduction and Use of Material	15
Rights and Obligations.....	16
Assignment of Antitrust Claims.....	16
Audit Access to Records.....	16
Intellectual Property Infringement	16
Ownership of Works and Data.....	17
Warranties	17
Confidentiality	18
Contract Documents	18
Assignment	19
Appendix A – Background, Sources, Related Documents	20

Metropolitan Portland Health Information Exchange Terms and Conditions for Vendor RFP Process and Contract

Purpose: Various terms and conditions will need to be incorporated in the request for proposal (RFP) for the technology services to support the Metropolitan Portland Health Information Exchange (MPHIE) as well the contract that would be issued to the successful bidder. This set of terms and conditions addresses three categories of terms and conditions as follows:

- RFP Terms and Conditions: includes terms and conditions that apply to the RFP submission made by a vendor. Most likely, these terms would be included in the instructions to bidders section of the RFP.
- Body of the Contract Terms and Conditions: includes terms and conditions that are related to the programmatic and/or technical aspects of the services.
- General Contract Terms and Conditions: includes terms and conditions that are generally applicable to most MPHIE contracts and not specifically related to the programmatic, technical or operational scope of the contracted services.

These terms are intended to provide a working draft of terms and conditions that can be incorporated into the RFP at the time of issuance.

Sources: The terms and conditions included herein were adapted from recent RFPs issued by the Delaware Health Information Network (DHIN) and the Massachusetts eHealth Collaborative (MAeHC).

Attachment XXX: RFP Terms & Conditions

Metropolitan Portland Health Information Exchange

Financial Information

If annual and quarterly financial statements of Contractor are not available from SEC filings, Contractor shall provide comparable financial information to MPHIE prior to execution of the Agreement for the period then most recently ended and thereafter promptly after the end of Contractor's fiscal year and each fiscal quarter during the term of the Agreement. Contractor shall represent and warrant that such financial information is in accurate and complete and fairly represents Contractor's financial condition and results of operations for the applicable periods in accordance with generally accepted accounting principles.

Exceptions

Offerors may elect to take minor exception to the terms and conditions of this RFP and must clearly state each exception in the offeror's cover letter. MPHIE will evaluate each exception according to the intent of the terms and conditions contained herein, but MPHIE shall reject exceptions that do not conform to MPHIE requirements and/or create inequality in the treatment of Offerors. Exceptions shall be considered only if they are submitted with the proposal or before the date and time of the proposal opening.

Offeror Responsibility

MPHIE will enter into a contract with the successful Contractor. The successful Contractor shall be responsible for all products and services as required by this RFP. Subcontractor, if any, shall be clearly identified in the financial proposal.

Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, MPHIE shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Affirmation

The Contractor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

Pricing

The Contractor agrees to provide MPHIE with Most Favored Customer Pricing for all Deliverables under this Agreement. Most Favored Customer Pricing shall mean that the Contractor represents

and warrants that the price for the sale and license of each Deliverable shall be at least as favorable to MPHIE as the purchase price provided to any other customer purchasing goods substantially similar to the Deliverables in similar quantities. If at any time during the Agreement, the Contractor's selling price of substantially similar Deliverables in similar quantities is lower than the applicable purchase price under this Agreement, the Contractor shall promptly notify MPHIE of such lower price and the purchase price of such Deliverable shall be reduced retroactively for any Deliverable not yet delivered or paid for. The MPHIE reserves the right to procure hardware on its own, should it deem such action to be cost-effective.

Subcontracts

Subcontracting is permitted under this RFP and the resulting contract; however, every subcontractor shall be identified in the Proposal and agreed to in writing by MPHIE or as are specifically authorized in writing by MPHIE during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of MPHIE.

The Contractor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the RFP and with all local, State and Federal laws. The Contractor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and MPHIE.

Confidentiality

Specific attention should be given to the identification of those portions of the proposal, which are deemed to be confidential and proprietary information and which should not be disclosed. Offerors are advised that upon request from a third party, MPHIE will make an independent determination as the information may be divulged to a third party.

Attachment YYY: Terms for the Body of the Contract

Metropolitan Portland Health Information Exchange

Term.

- (a) The Agreement shall be in effect for an initial term of twenty-four (24) months and, at MPHIE's election, for a renewal term of an additional twenty-four (24) months, unless terminated earlier by a party pursuant to the Agreement. The Agreement shall allow a party to terminate in the event of a breach by the non-terminating party that is not cured after written notice from the terminating party. The cure period shall be thirty (30) days except to the extent that a shorter cure period may be appropriate to comply with applicable law or minimize the risk of material error. MPHIE may also terminate at any time during the operations phase without further obligation to Contractor if it gives at least ninety (90) days notice to Contractor.
- (b) Upon termination of the Agreement for any reason, Contractor shall, to the extent reasonably requested by MPHIE, provide services to achieve a smooth transition for up to nine (9) months at the rates specified in the Agreement.

Source Code Escrow.

If the Agreement includes a license of Contractor's software and if deemed appropriate by MPHIE, Contractor shall establish a source code escrow (or include MPHIE as a beneficiary of an existing source code escrow) in order to assure the uninterrupted operation of the Deliverables and Services despite any failure or inability of Contractor to support any Deliverables or provide Services. The source code deposited in such an escrow shall be updated on a monthly basis and shall include such documentation as may be necessary to enable a third party to operate the Deliverables and/or provide the Services without interruption.

Acceptance Process.

The Agreement shall include an acceptance process through which MPHIE shall be permitted to test the Deliverables to verify the Deliverables perform in accordance with the standards set forth in the Agreement. Contractor shall correct within ten (10) days any deficiencies in the Deliverables, at no additional cost to MPHIE. Following any corrections, MPHIE shall be permitted to test the Deliverables again to verify they perform in accordance with the standards set forth in the Agreement. This process shall be repeated until MPHIE is satisfied that the Deliverables (as corrected, if applicable) contain no defects and that they perform in accordance with the standards set forth in the Agreement; provided, however, that if the acceptance test is not satisfied more after two or more attempts, the MPHIE may, in its sole discretion and without limitation of any other rights, terminate the Agreement in whole or in part and receive a full refund from Contractor of all amounts then paid with respect to the terminated portions. Such refund shall be paid within ten (10) days after notice of such termination.

Product Substitutions

All items or services delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the proposal unless specific approval is given by MPHIE to do otherwise. Awarded Contractors are highly encouraged to offer any like substitute product(s), especially if an opportunity for cost savings to the MPHIE exists. In all cases, MPHIE may require the submission of written specifications for evaluation prior to any substitution approvals being granted.

Schedule for Performance of Work

All work described in these specifications shall be completed with reasonable promptness. As used in this Section, MPHIE shall be the sole judge of the term "reasonable". If the Contractor does not begin the work in a reasonable amount of time, they will be notified that if they fail to initiate the work promptly, the contract may be terminated and the MPHIE will forthwith proceed to collect for nonperformance of work.

Time of Performance

The services of the Contractor are to commence after receipt of a purchase order, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract, but in any event all of the services required hereunder shall be completed no later than the time periods set out in any schedule contained in the project Scope of Work. Any such schedule (as described in Section 2.7.3) shall be maintained by the Contractor unless amended, in writing, by both parties.

Personnel

The Contractor represents that he has, or will secure at his own expense, all personnel required to perform the services required under this contract. All of the services required hereunder shall be performed by the Contractor or under his direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the prior written approval of MPHIE.

Method of Payment

MPHIE will pay the Contractor based upon the agreed upon fee schedule established in the contract. When non-federal funds are appropriated to pay the Contractor's invoice, the Contractor shall receive payment within 30 days. When federal monies are appropriated for Contractor deliverables, the MPHIE must invoice the federal government upon receipt of an invoice from the Contractor. As such, the MPHIE will pay the Contractor's invoice upon receipt of funding from the Federal government.

Warranties: Software

Contractor warrants the following for so long as MPHIE (i) subscribes to the Product / Software Support Services or (ii) subscribes to the Remote Processing Services (Warranty Period):

The Software, when operated on the Configuration as set forth in this Agreement, shall be free of any material defects and will perform in accordance with the Documentation and the technical and functional specifications.

The Software does not include any clock, timer, counter, or other limiting, disabling, or self-replicating code that was created by or known to Contractor which causes the Contractor Software or any other data to be disabled, distorted, erased, made inoperable or otherwise incapable of being used in accordance with this Agreement and in the full manner for which it is designed.

The Software shall work compatibly with major commercially available virus and spam protection programs that MPHIE may use on its workstations and other access devices. Contractor will take appropriate steps, including but not limited to, using current tools to test the Software prior to delivery, to prevent the introduction of any virus into the System.

Contractor shall correct malfunctions and errors in the Software at no charge to MPHIE.

All Documentation is comprehensive, accurate, current and consistent with the Software.

The Software shall function in accordance with the Documentation. Regarding regulatory compliance, Contractor shall modify the Software for existing products, as necessary, due to changes in applicable laws or regulations. Contractor understands that time is of the essence, and will achieve all applicable modifications in a timely manner to existing products. In the event that Contractor anticipates a delay of such modifications, Contractor will provide timely notification of any such potential delay to MPHIE.

For the duration of the Warranty Period, the Software, and custom programming shall operate together with the Equipment and Third Party Software in accordance with the applicable Documentation, the applicable Configuration and the applicable Specifications which have been developed by Contractor and agreed to by MPHIE.

All modules and components of the System are fully compatible with each other and with MPHIE's current health care information systems and are capable of being interfaced in and to a network environment. The System shall contain all of the interfaces specified in the Interface Specifications and identified in the Implementation Workplan. All interfaces will be provided in a

timely manner and will function efficiently and effectively according to mutually agreed interface specifications developed by the parties and set forth in the Implementation Workplan.

The Software is Date / Time Compliant. For purposes of this Agreement, "Date / Time Compliant" means that the systems will: (A) process data involving 4-digit year dates, including single-century formulae and multi-century formulae; (B) will not malfunction or generate incorrect values involving such dates; (C) when used in combination with other information technology will accurately process and properly exchange date data with it; and (D) will not cause any other item that is otherwise Date / Time Compliant to fail to be Date / Time Compliant.

The Hardware, the Software, and the third party software as set forth in this Agreement are all that are required to operate the System and fully utilize all functions and specifications described in this Agreement and in the Documentation so that the System shall meet the performance requirements including volume, scalability and response time service levels (Attachment 9). If any additional software or hardware is required, Contractor shall immediately upon demand by MPHIE supply such software and hardware to MPHIE at no additional cost and provide services to MPHIE at Contractor's cost.

The System contains commercially reasonable industry standard safeguards including those requirements mandated by HIPAA designed to prevent unauthorized users from gaining entry or access to the System.

Contractor does and shall continue to utilize all commercially reasonable methods including those requirements mandated by HIPAA to prevent security breaches and to protect MPHIE's information systems against the risk of penetration by a third party.

Service Levels and Failure to Perform

Service Levels

The parties shall agree to certain Service Levels to be incorporated into the Agreement as performance standards including metrics relating to but not limited to the following: system availability, system response time warranties, and problem support response and resolution / fix time. The Contractor recognizes that its failure to meet Service Levels may have a material adverse impact on the business and operations of the Utility and that the damage from the Contractor's failure to meet a Service Level is not susceptible of precise determination. Accordingly, in the event that the Contractor fails to meet a Service Level, in addition to any remedies available to MPHIE under this Agreement, MPHIE may (i) elect to recover Service Levels Credits as agreed to by the Contractor, (ii) in case the failure is a material breach which will constitute cause for termination, recover any actual damages suffered by MPHIE (in addition to already received Service Level Credits), and (iii) terminate this Agreement, provided the failure constitutes cause for such termination.

Service Level Failure

In the event of a Service Level failure, within five (5) business days (or such longer period as may in a particular case be reasonably agreed by the Parties) of receipt of a notice from MPHIE with respect to (1) failure to meet a Service Level for any of the Services or (2) the repeated failure to provide Services in accordance with the Service Levels, the Contractor shall (i) perform a root-cause analysis to identify the cause of such failure, (ii) correct such failure, (iii) provide MPHIE with a report detailing the cause of, and

procedure for correcting, such failure, and (iv) provide MPHIE with reasonable evidence that such failure will not reoccur.

Service Level Credits

In the event, during any calendar month, that the Contractor fails to meet any Service Level, then the following month's installment of the contract price shall be reduced to compensate MPHIE for the diminution in performance in accordance with the Service Level Credits (disincentives) process for each such Service Level failure. For the avoidance of doubt, the termination rights shall apply in addition to the foregoing remedy.

In addition to the remedies provided herein, the Contractor shall work immediately and continuously to correct the Service Level failure

Remote Processing

If Contractor provides Remote Processing Service, Contractor will provide the remote processing services in a timely, professional, competent, businesslike and commercially reasonable manner. The warranties above apply with equal force to the Remote Processing.

Disaster Avoidance and Recovery

For the term of this Agreement, the Contractor will maintain disaster avoidance provisions designed to safeguard any data in the Contractor's possession. The Contractor will also maintain recovery plans to be used during unexpected events which may, for limited periods of time, affect the ability of the Contractor to perform its obligations under this Agreement. The Contractor tests and updates these plans on a routine basis. The Contractor shall provide MPHIE with the SAS-70 version of its Business Recovery Plan on the Effective Date of this Agreement and as requested during the Term. The Contractor shall continuously improve its business recovery processes to facilitate the continuity of its services to MPHIE including actively reviewing new technology in the industry, hardware and uninterruptible power supply Contractors on a regular basis. Contractor shall provide business continuity and disaster recovery services by utilizing off site data storage and a hot site which has the necessary hardware to back-up the data center. Such disaster recovery services are designed to achieve and attain resumption of on-line services for clinical systems in the Production environment with no down time.

Services

In recognition of the importance of timely completion of services as commercially reasonable, Contractor warrants that the services provided by Contractor to MPHIE under this Agreement shall be performed in a timely, professional, competent, businesslike and commercially reasonable manner by qualified personnel with previous installation or support experience with the Software and its operation and in a manner consistent with generally accepted industry standards applicable to persons specializing in the area of software implementation services or software support services for hospital and medical systems.

Contractor warrants that it shall have and maintain sufficient resources, facilities, capacity and manpower to assure that its services shall be diligently performed in accordance with the terms and conditions of this Agreement.

All interfaces specified in this Agreement will be provided and will function efficiently and effectively according to mutually agreed interface specifications developed by the parties and set forth in the Implementation Workplan.

Contractor warrants that the training provided to MPHIE, its employees and agents identified in the Implementation Workplan shall be sufficient to permit a reasonably skilled person with relevant skill sets, generally familiar with the Documentation, to properly and effectively use the Software.

The Contractor warrants that neither the organization nor any employees working at MPHIE have been debarred, suspended, or excluded from providing services under government programs.

Hardware and Third Party Software

Contractor warrants that as to any hardware or third party software purchased by MPHIE from Contractor: (i) such items shall be ordered new from Contractor's supplier(s) and will include the manufacturer's standard end-user warranty; and (ii) Contractor shall pass through to MPHIE all applicable hardware and applicable third party software manufacturers' assignable end-user warranties and indemnifications.

Contractor agrees to actively work with MPHIE to resolve any issues or problems MPHIE may encounter with owner, manufacturer, licensor, sub licensor, and/or reseller of any third party software and hardware.

Attachment YYY: General Contract Terms & Conditions

Metropolitan Portland Health Information Exchange

The Metropolitan Health Information Exchange (MPHIE) plans to execute contracts as a result of the RFP that will include the following Terms and Conditions. Contractor proposals submitted in response to the RFP should note any issues or exceptions to these Terms and Conditions. In the absence of any noted issues or exception, MPHIE will assume that the Contractor concurs with the Terms and Conditions. The MPHIE reserve the rights to make changes, additions and deletions to these Terms and Conditions during the RFP and contract negotiation process.

Warranties and Standards of Performance.

- (c) Service and Performance Warranty. Contractor represents, warrants and covenants that (i) it shall perform the Services in a timely, competent and workmanlike manner in accordance with the service levels and other standards set forth in the Agreement and (ii) that all Deliverables will perform in accordance with the applicable documentation, functional specifications, and/or requirements set forth in the Agreement. The description of the Services and Deliverables in the Contractor's Response to MPHIE's Request for Proposal shall be included in the Agreement for purposes of this warranty.
- (d) Pass-Through Warranty. If applicable, Contractor shall pass through to MPHIE any product and third party end-user warranties and indemnities. To the extent Contractor is not permitted to pass-through such warranties, Contractor agrees to enforce such warranties and indemnities on behalf of MPHIE.
- (e) Warranty of Title and Ability to License. Contractor represents, warrants and covenants that MPHIE shall receive good title to all Deliverables other than

standard third party software, free of any security interests, liens or other claims of third parties.

- (f) Intellectual Property Warranty. Contractor represents, warrants and covenants that the Services and Deliverables do not and will not infringe upon and are free from any claim by any third party of infringement or misappropriation of any patent, trademark, copyright, trade secret or any other proprietary right of any third party.
- (g) Virus Warranty. Contractor represents, warrants and covenants that it will use (and, if applicable, cause subcontractors to use) commercially reasonable efforts to maintain all Deliverables and provide all Services, free of software viruses, disabling code or similar items.
- (h) Security / Disaster Recovery. Contractor represents, warrants and covenants that it shall, at all times, have a disaster recovery plan reasonably acceptable to MPHIE and that it shall implement such disaster recovery plan when applicable. In addition, Contractor shall provide a copy of its disaster recovery plan at least annually and upon any material changes to its plan. Contractor represents, warrants and covenants that it shall implement security measures that reasonably and appropriately protect the confidentiality, integrity and availability of all data stored on, generated by or transmitted through the Deliverables.
- (i) Support. If the Agreement includes a license of software, Contractor shall agree to support such software for a minimum of twenty-four (24) months (and, at MPHIE's election, an additional twenty-four (24) months thereafter) at the rates and on the terms set forth in the Agreement. Such support shall be provided on a 7 x 24 x 365 basis with appropriate response times and escalation procedures depending on the severity of the problem.
- (j) Mutual Warranties. Each party represents and warrants to the other that: (a) it is validly existing under the laws of the state of its organization and has full power and authority to enter into the Agreement and to carry out the provisions thereof; (b) it is duly authorized to execute and deliver the Agreement and to perform its obligations hereunder; (c) the Agreement is a legal and valid obligation binding upon it and enforceable according to its terms; and (d) the execution, delivery and performance of the Agreement by such party does not conflict with any agreement, instrument or understanding by which it may be bound.
- (k) Hosting Services. The Contractor shall provide, manage, maintain and operate the servers, telecommunications facilities and other hardware and software necessary or desirable to ensure that the applicable service is available and operating in accordance with the following minimum service levels: (a) 24x7x365 availability; (b) minimum application, infrastructure and general uptime availability of 99.9% per month; (c) response rate of less than two (2) seconds for standard server queries; and (d) dataloads to be performed within such timeframes as the parties agree (collectively, "**Service Levels**"). Penalties for failure to meet such Service Levels shall be set forth in the Agreement.
- (l) Contractor shall not allow a third party subcontractor or other entity, whether domestic or foreign, to perform any of the development, operation, support, hosting or other services under the Agreement without the prior written consent of MPHIE.

- (m) With respect to the services during the operations phase (if applicable), Contractor shall host and store MPHIE's data on a separate secure area of each server on which such data resides (and on a separate server if reasonably requested by MPHIE in light of changing circumstances).

Compliance with Law; Certification.

- (n) Contractor shall at all times comply with all applicable laws and comply with all legal requirements that MPHIE reasonably identifies in writing as necessary or advisable in order to assure compliance with law by MPHIE. Such requirements include:
 - (i) provisions that a covered entity or business associate of a covered entity is required to include in a contract with Contractor as a business associate and/or contractor pursuant to the privacy and security rules adopted under HIPAA (the Health Insurance Portability and Accountability Act of 1996),
 - (ii) certification that the Contractor is not excluded from participation in any federally funded program, and
 - (iii) any access to records or other provisions that MPHIE is required to impose on subcontractors such as Contractor in accordance with state or federal law.
- (o) Contractor shall, at its sole cost and expense, obtain and maintain certification under the applicable standards set forth from time to time by appropriate standards organizations reasonably identified by MPHIE during the term of the Agreement.

Confidentiality.

Protected health information that is subject to HIPAA and/or applicable state privacy laws shall be subject to appropriate "downstream" contract provisions that MPHIE is required to include in its contracts with subcontractors as a business associate of a covered entity subject to HIPAA. The Agreement shall also include appropriate language to protect the confidential and proprietary information of MPHIE (including, the IP, as defined in Section 1 above) that is not protected health information and confidential and proprietary information of Contractor. Other agreements relating to Contractor's ability to access, use and disclose data may be required, as agreed upon by MPHIE and Contractor.

Insurance.

Contractor shall maintain insurance during the term of the Agreement in types and amounts typically maintained by providers of the Deliverables and Services, including workers' compensation insurance as required by applicable law. At MPHIE's request, Contractor shall cause MPHIE to be added to such policies of insurance (other than workers compensation insurance) as an additional named insured.

Indemnification.

Contractor shall fully indemnify, defend and hold harmless MPHIE and its officers, directors, agents, employees and representatives against any claim that any of the Deliverables and/or Services or any portion thereof infringes or misappropriates any patent, copyright, trade mark,

trade secret or other proprietary rights of a third party or that Contractor has breached its confidentiality, privacy or security obligations under the Agreement, including attorneys fees to defend such claim.

Contractor also agrees to indemnify, defend and hold harmless MPHIE and its, officers, directors, agents, employees and representatives against any claim arising from (a) any act or omission of the Contractor, its agents, employees or subcontractors that results in an injury to or death of any person in connection with the Deliverables or performance of the Services, except to the extent that such claim arose from an act or omission of MPHIE and (b) any breach of the Contractor's obligations under the Agreement by the Contractor or its agents, employees or subcontractors except to the extent that such claim arose from any breach of MPHIE's obligations under the Agreement.

Any right to receive indemnification hereunder shall be subject to the indemnified party providing prompt notice of the claim and reasonable cooperation to the indemnifying party.

Availability of Continued Funding

This contract is contingent upon the continued availability of funding appropriated by MPHIE stakeholders, MPHIE service revenues, and grants and/or contracts from foundations and governmental entities.

Hold Harmless

The Contractor agrees that it shall indemnify and hold the MPHIE and its participating organizations harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the Contractor, its employees, and invitees on or about the premises and which arise out of the Contractor's performance, or failure to perform as specified in the Agreement.

Non-Performance

In the event the Contractor does not fulfill its obligations under the terms and conditions of this contract, the MPHIE may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the Contractor. Under no circumstances shall monies be due the Contractor in the event open market products can be obtained below contract cost. Any monies charged to the Contractor may be deducted from an open invoice.

Force Majeure

Neither the Contractor nor the MPHIE shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

Document(s) Execution

Both the non-collusion statement that is enclosed with this Request for Proposal and the contract form delivered to the successful Offeror for signature shall be executed by a representative who has the legal capacity to enter the organization into a formal contract with the MPHIE.

Termination of Contract

Termination for Cause

If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the MPHIE shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor in the performance of the contract shall, at the option of MPHIE, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to MPHIE.

Termination for Convenience

MPHIE may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to MPHIE. If the contract is terminated by MPHIE for convenience, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor called for by the contract, less payments or compensation previously made; provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the Contractor during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract.

Resolving Disputes

Resolving Disputes

The intent of the parties is to identify and resolve disputes promptly after any dispute arises. Except as provided otherwise in this Agreement, each party agrees that the parties shall use reasonable efforts to settle any disputes related to this Agreement through efficient communication and informed discussion. Either party may, by written notice to the other party, inform the other of a dispute under this Agreement by describing the nature of the dispute, the matters at issue and whether the notifying party believes the matter to need "Dispute Resolution" as hereinafter provided.

Dispute Resolution

If either party believes that a matter in dispute is mission critical (Problem Severity Level 1 or 2); or may affect mutually agreed upon deadlines; or upon a parties written reasonable request that party may choose to proceed as follows:

Initially, upon receipt of written notice, the other party shall respond in writing (electronic) within one (1) working calendar days. The parties shall cooperate by providing information and answering questions to facilitate an informed discussion of the issues in dispute.

If the dispute is not resolved to the satisfaction of either party within ten (10) calendar days following the written response, either party may require that the executives of both parties discuss the dispute and attempt to resolve it as provided for in this Section.

Should the initial ten (10) calendar-day period described above not result in a resolution of the dispute, the parties shall proceed as follows:

Figure 1 - Dispute Resolution

Negotiating Parties	Maximum Duration Prior to Escalation
MPHIE's and Contractor's Project Manager	5 calendar days
MPHIE Service Delivery Manager and Contractor's VP Implementation	5 calendar days
Senior Executive Officers	5 calendar days

Changes

Both parties may, from time to time, require changes in the services to be provided by the Contractor under the Scope of Work. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between MPHIE and the Contractor shall be incorporated in written amendments to the contract.

Interest of Contractor

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree in providing products or performing services required under this contract. The Contractor further covenants, that in the performance of this contract, no person having any such interest shall be employed.

Publication, Reproduction and Use of Material

No material produced in whole or part under this contract shall be subject to copyright in the United States or in any other country. MPHIE shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this contract; provided, however, that the MPHIE agrees not to use any design or engineering plans prepared by the Contractor for anything other than their intended purpose under this Contract. The Contractor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the MPHIE's support shall be given in the publication. For items financed by the Federal government, appropriate credit must be attributed as specified in the contract.

Rights and Obligations

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the terms of this agreement, unless and until a valid executed contract has been approved by MPHIE.

Assignment of Antitrust Claims

As consideration for the award and execution of this contract by MPHIE, the Contractor hereby grants, conveys, sells, assigns, and transfers to the MPHIE all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Oregon, relating to the particular goods or services purchased or acquired by MPHIE pursuant to this contract.

Audit Access to Records

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to MPHIE, upon request, such records for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official MPHIE representative in the performance of his/her duties under the Contract. Upon notice given to the Contractor, representatives of MPHIE or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the MPHIE for disallowances shall be drawn from the Contractor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

Intellectual Property Infringement

Contractor shall defend and indemnify MPHIE and hold MPHIE harmless against all claims of infringement related to the Software. MPHIE shall promptly notify Contractor of any infringement claim. Contractor shall maintain control of the defense and all settlement negotiations.

Contractor's Cures for Infringement

This provision contains MPHIE's exclusive remedy and Contractor's sole liability with regard to any claim of infringement related to the Software or other actions of Contractor. If use of the Software or actions of the Contractor by MPHIE is the subject of a claim for infringement; then Contractor, at its option and expense, may either:

- procure for MPHIE the right to continue using such Software,
- replace or modify such Software, without substantially diminishing functionality, so that it becomes non-infringing, or
- refund an amount paid for Software to MPHIE.

Third Party Software and Hardware Infringement

Contractor shall assign to the MPHIE all permitted indemnities against infringement of the Third Party Software and Hardware upon the intellectual property rights of any third party.

Ownership of Works and Data

Each party owns its works, intellectual property and confidential information created prior to the Effective Date of this Agreement. Enhancements to Contractor's pre-existing Software such as updates, releases, versions generally provided to Contractor's customers shall be owned by the Contractor. Any customization, reports or programming changes to existing Software provided by Contractor which specifications were provided by MPHIE and all Tailoring shall be owned by MPHIE and shall be deemed "work for hire" under the Copyright Act. MPHIE shall have full and unrestricted access and control over all such changes. Should the parties decide to jointly develop software or any technology or intellectual property based on mutually agreed to specifications, (i) they shall each own such jointly developed works with full right to exploit them for internal use, (ii) they shall enter into an agreement upon mutually agreed to the terms and conditions to govern the commercial use of such jointly developed works.

As between MPHIE and Contractor, all data, including patient data, shall be owned and controlled by MPHIE. Contractor shall not prohibit access to or impose any restriction (technical, contractual or otherwise) on the use of such data.

To the extent that MPHIE has configured or tailored the system using content specialized for MPHIE, the special features used by MPHIE or those containing MPHIE's confidential information shall be owned by MPHIE.

Warranties

Contractor warranties shall include but are not limited to the following:

Ownership

Contractor warrants that it is the sole owner of or rightful licensee to all intellectual property rights in the Contractor Software and that Contractor has the full power, right and authority (including all necessary intellectual property rights) to license and deliver copies of the Software and to deliver the third party software and hardware specified in this Agreement to MPHIE free from any liens and encumbrances, except as described in this Agreement. There are no claims or threats of claims against Contractor with respect to its right to license, sublicense, use, sell, re-sell or distribute any product in this agreement.

General Warranties

Contractor warrants the merchantable quality of the Deliverables sold and licensed hereunder and that such Deliverables will conform to any specifications, drawings, samples, or other descriptions furnished or specified by Buyer, will be of good material and workmanship and free from defect. Contractor expressly warrants that the material covered by this Agreement, which is the product of Contractor or is in accordance with Contractor's specifications, will be fit and sufficient for the purpose intended and complies fully with the Health Insurance Portability and Accountability Act of 1996.

Contractor warrants to MPHIE that each of the foregoing representations is true and correct in all material respects as of the date of this Agreement and that none of them omits any material fact, the omission of which would make any such representations misleading. Contractor shall immediately notify MPHIE in writing if any representation, warranty, duty or covenant set forth in this Agreement becomes untrue or inaccurate in any material respect. The notice shall set forth the reasons for or description of the matter which is the subject of the notice.

Confidentiality

Confidential Information

All information or data relating to the business or operations of the Utility acquired by the Contractor pursuant to, or in connection with, an agreement stemming from an award of a contract or the Contractor's performance there under, shall be treated by the Contractor as proprietary to MPHIE. The Contractor will hold such information in strict confidence and shall not disclose to any other person or entity whatsoever by the Contractor without MPHIE's prior written permission. Without limiting the generality of the foregoing, the Contractor shall, at a minimum, take such measures to preserve the confidentiality of MPHIE's proprietary information and data as it usually and customarily takes to preserve the confidentiality of its own proprietary and/or confidential information and data.

For purposes of this section and without limiting the generality of the foregoing, it is expressly agreed and acknowledged by the Contractor that the following described information or data are proprietary to MPHIE and are legally protected under Federal and Oregon law. Such information shall be held by the Contractor in strict confidence, and, accordingly, shall not be disclosed by the Contractor to any other person or entity without the MPHIE's prior written consent and authorization:

- Information relating to the identity of any resident, patient, business operation (i.e., users, participant, or members) of the MPHIE and/or the Utility;
- Information relating to any services provided by the users, participants, and/or members of the Utility to any such resident or patient;
- Information relating to the diagnosis and/or treatment of any such resident or patient; and/or,
- Information relating to any amounts charged to, or funds received from any users, participants, and/or members of the Utility including any healthcare provider or any third-party payer with respect to any services provided to any of its residents or patients.

The Contractor agrees to indemnify, defend, and hold harmless MPHIE for and with respect to any losses, liabilities, costs, and/or expenses incurred by MPHIE as a result of any breach by the Contractor or any of its employees, Contractors, or agents of any of the provisions of this section.

Confidentiality of Protected Health Information

The parties agree that the services to be performed involve the disclosure of protected health information for purposes related to treatment, payment and hospital operations as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as the same may be amended from time to time, and all other laws and regulations relating to the privacy of patient information, and that such information shall not be disclosed.

Contract Documents

The Definitions and Bidding Conditions; and Specifications, Request for Proposal, Proposal, and Contract shall be a part of and constitute the entire Agreement entered into by MPHIE and any Offeror. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter:

- Contract
- Request for Proposal

- Specifications or Offeror's response to Scope of Work
- Definitions & Bidding conditions
- Offeror's Proposal
- Special Instructions

The contract may be amended, in writing, by mutual agreement of the parties.

Assignment

This contract shall not be assigned except by express written consent from the MPHIE.

Appendix A – Background, Sources, Related Documents

The MPHIE Mobilization Planning effort was commissioned and financed by the Oregon Business Council's Health Information Exchange Leadership Group. The project leadership team (Tiger Team) provided oversight and leadership in guiding the development of the planning included:

Andrew Davidson, Oregon Association of Hospital and Health Systems
Janice Forrester, PhD, The Regence Group
Dick Gibson, MD, PhD, MBA Providence Health Systems & Legacy Health Systems
Jody Pettit, MD, Oregon Health Care Quality Corporation & Office for Oregon Health Policy and Research

The Mobilization Planning effort was staffed by Oregon Health Care Quality Corporation. Staff and sub-contractors who contributed to various portions of this report include:

Nancy Clarke
Jody Pettit, MD
Tom Ricciardi, PhD
David Witter, Witter & Associates

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The Mobilization Planning effort builds upon the report to the Oregon Business Council (OBC) Data Exchange Group titled “Oregon Health Information Exchange Options” dated May 15, 2006 available at <http://www.q-corp.org/q-corp/images/public/pdfs/OR%20HIE%20Options.pdf>.

The Mobilization Planning effort report relies on a number of sources of information including published studies, publications and reports of major organizations involved in health information exchange, and information collected from other regional health information organizations (RHIOs) and health information exchanges (HIEs) and interviews and discussion with clinicians and other stakeholders in the community.

Key Mobilization Planning documents include

- MPHIE Final Report
- Metropolitan Portland Area Health Care Environment.
- MPHIE Technology Plan.
- MPHIE Privacy and Security Assessment.
- MPHIE Governance Plan.
- MPHIE Business Plan.
- MPHIE Operations Plan.